BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-516-C - ORDER NO. 2001-045

JANUARY 16, 2001

IN RE:	Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996.	)	ORDER ON ARBITRATION

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration of Adelphia Business Solutions of South Carolina, Inc. ("Adelphia") to establish an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"). On October 11, 2000[1], Adelphia filed its Petition after Adelphia and BellSouth were unable to reach agreement on all issues despite good faith negotiations between the parties. Adelphia's Petition for Arbitration presented five unresolved issues (Issues No. 1-5). BellSouth filed a Response on November 3, 2000, and by its Response presented one additional issue (Issue No. 6).

[1] By letter dated May 4, 2000, Adelphia made a bona fide request for interconnection, services, or network elements pursuant to Section 252(a) of the 1996 Act. Pursuant to Section 252(b)(1) of the 1996 Act,

Following the institution of this proceeding, the Commission established a schedule and procedure for arbitration.[2] Pursuant to the scheduling order, the parties filed testimony setting forth the outstanding issues to be arbitrated by the Commission. The parties also submitted lists of suggested examination questions.

A hearing on the issues raised in Adelphia's Petition and BellSouth's Response was scheduled for December 21, 2000. On or about December 20, 2000, the parties advised the Commission that, through negotiations that had continued after the Petition had been filed, five of the six issues initially presented for arbitration had been resolved. With the concurrence of the Commission, the parties agreed to stipulate the pre-filed testimony into the record, waive a hearing, and submit briefs addressing the one remaining issue in this proceeding. Thus, this Commission will only address in this Order the remaining unresolved issue as presented by the parties.[3]

Adelphia presented the pre-filed direct and rebuttal testimony of Mr. Eugene J. Brown, Director of LEC Relations for Adelphia Business Solutions, LLC, a parent corporation of Adelphia Business Solutions of South Carolina, Inc., and the pre-filed direct and rebuttal testimony of Mr. Timothy J. Gates, Senior Vice President of QSI Consulting, Inc., a consulting firm specializing in the areas of telecommunications policy, econometric analysis and computer aided modeling. BellSouth presented the pre-filed

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Adelphia could bring a petition for arbitration of outstanding issues during the period from the 135th day to the 160th day after May 4, 2000.

[2] *See* Commission Order No. 2000-884 (October 31, 2000).

[3] The Commission "shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)" and "shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." 47 U.S.C. Section 252(b)(4)(A) and 47 U.S.C. Section 252(b)(4)(C).

direct and surrebuttal testimony of Mr. John A. Ruscilli, Senior Director for State Regulatory for the nine-state BellSouth region. All testimony has been stipulated into the record by consent of both parties. Briefs were filed by both parties on January 5, 2001.

II. STATEMENT OF ISSUE

The issue before the Commission for determination is set forth in Adelphia's Petition as Issue 2 and is stated as follows:

> Issue 2: (A) Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Adelphia based solely upon the physical location of Adelphia's customers? (B) Should BellSouth be able to charge originating access to Adelphia on all calls going to a particular NXX[4] code based upon the location of any one customer?

III. POSITIONS OF THE PARTIES

Adelphia's Position:

Adelphia proposes that reciprocal compensation should apply to all calls that are "local" to the calling party, regardless of the physical location of the ultimate called party and that BellSouth should be prohibited from billing Adelphia access charges for that traffic. Adelphia contends that this position is consistent with historical practice in the industry of rating a call as local or toll by referring to and comparing the NXX's of the calling and called parties. Adelphia also suggests that compensation for this traffic as local more accurately reflects the costs incurred by both parties, arguing that the costs BellSouth incurs to transport a call destined for an Adelphia customer do not vary with the actual location of the called customer. Finally, Adelphia contends that its proposal

[4] "NXX codes are the fourth through sixth digits of a ten-digit telephone number. These codes are used as rate center identifiers ..." Direct Prefiled Testimony of Timothy J. Gates (hereafter, "Gates Direct") at 17, ll. 1-2.

regarding reciprocal compensation for calls to customers who use these "virtual NXX" arrangements, among other things, will benefit those businesses, including ISPs, who find it desirable to obtain local numbers in several communities, while maintaining a limited number of physical locations, in order to reach and to serve a broader base of customers. Indeed, Adelphia claims that one benefit of this type of service is that it provides wider, more reasonably priced access to the Internet through the use of local telephone numbers, especially in rural and sparsely populated areas of the state.

BellSouth's Position:

BellSouth asserts that the actual physical end-points of a call should determine whether it is local or toll, not whether the NXX codes are associated with the same local calling area. Under BellSouth's position, the parties should be obligated to pay reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area, only if the call actually terminates to the other party's end users physically located in the same local calling area. BellSouth asserts that when the called party's physical location is not in the same local calling area as the calling party, then the communications is an intraLATA toll call for which BellSouth is entitled to receive originating access charges.

IV. DISCUSSION

This issue centers on the treatment of a particular type of traffic referred to as "virtual NXX." "Virtual NXX" allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located.[5] As far as the person calling

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[5] Gates Direct at 17, ll. 1 –7 and 19, ll. 4 - 5.

the number is concerned, the call is a local call, but the party answering the call is actually located somewhere else within the LATA. This type of arrangement is referred to as "virtual NXX" because the customer assigned to the telephone number has a "virtual" presence in the associated local calling area.[6] This presence, however, "is just a virtual presence, not a physical one."[7] "Virtual NXX" is similar to foreign exchange ("FX") service[8] provided by an ILEC.[9] However unlike FX service, "virtual NXX" does not use lines dedicated to particular customer for transporting the call between rate centers.[10] "Virtual NXX" also closely parallels 800 service.[11]

When the North American Numbering Plan Administrator ("NANPA") gives Adelphia an NPA/NXX code, Adelphia must assign that NPA/NXX code to a rate center.[12] All other carriers use this assignment information to determine whether calls originated by their customers to a number in that NPA/NXX code are local or long

[6] *Id.* at 17, ll. 5 – 7.
[7] *Id.* at 22, ll. 8-10.
[8] Foreign exchange, or FX, service is described by witness Ruscilli as

> FX service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. The service is provisioned over dedicated facilities from the subscriber's premises to a foreign office. ... it appears to the originating customer that they are making a local call when, in fact, the terminating location is outside the local calling area. Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service. The reason the originating end user is not billed for a toll call is that the receiving end user has already paid for the charges in the form of dedicated access from the real NPA/NXX office to the FX ... office. There are charges for this function and they are being paid by the customer that is benefiting from the FX service.

Direct Prefiled Testimony of John A. Ruscilli (hereafter Ruscilli Direct) at 13, l.23 – 14, l. 13.

[9] Gates Direct at 17, ll. 4-5, 20-21.
[10] Ruscilli Direct at 14, ll. 20 – 21.
[11] *Id.* at 14, ll. 18.
[12] *Id.* at 10, ll. 21-23.

distance calls.[13] There is no dispute that when a BellSouth customer located in a given local calling area calls an Adelphia customer located in the same local calling area, BellSouth owes reciprocal compensation to Adelphia for transporting and terminating the call. [14]

BellSouth's concerns regarding this issue are explained in the direct testimony of Mr. Ruscilli.[15] As Mr. Ruscilli notes, Adelphia may assign a telephone number that is associated with the Orangeburg, South Carolina local calling area to an Adelphia customer physically located in Columbia, South Carolina.[16] When a BellSouth customer in Orangeburg calls this "virtual NXX" number to reach the Adelphia customer located in Columbia, the end points of the call are in Orangeburg and Columbia, and, therefore, the call is a long distance call.[17] As Mr. Ruscilli notes, "[u]nder Adelphia's proposal, BellSouth would pay reciprocal compensation on those calls from Orangeburg to Columbia … which are clearly long distance calls and not subject to reciprocal compensation."[18]

It is not unlawful for Adelphia or another CLEC to provide "virtual NXXs" to its customers.[19] Adelphia, or another CLEC, may assign an NXX code to a customer who is not physically located in the rate center to which the NXX code has been assigned. The issue which this Commission must decide is whether a call to that "virtual NXX" is a

[13] *Id.* at 10, l. 23 to 11, l. 1.
[14] *Id.* at 11, l. 19 to 12, l. 6.
[15] See Ruscilli Direct at 11-13.
[16] Ruscilli Direct at 12, ll. 10-12.
[17] *Id.* at 12, ll. 16-17.
[18] *Id.* at 12, l.22 – p.13, l.2.
[19] Gates Direct at 17, ll. 2-4 and 17-20.

local call for which reciprocal compensation must be paid or a toll call on which originating access charges are due.

The FCC's rules provide that reciprocal compensation is due only when traffic originates and terminates within the same local calling area. 47 CFR § 51.701(a) provides that "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other communications carriers." "Local telecommunications traffic" is defined as "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission …"[20] 47 CFR.§ 51.701(b)(1).

In resolving this issue, the Commission must give due regard to the FCC rules. The FCC definition of local telecommunications traffic is clear that telecommunications traffic is local only if it originates and terminates within the same local calling area.[21] Further, it is equally clear under the FCC's rules that reciprocal compensation applies only to local telecommunications traffic.[22]

Applying the FCC rules to the factual situation in the record before this Commission regarding this issue of "virtual NXX", this Commission concludes that reciprocal compensation is not due to calls placed to "virtual NXX" numbers as the calls do not terminate within the same local calling area in which the call originated. As noted above, the FCC rules require reciprocal compensation only for the transport and

[20] The remainder of this subsection, which defines local telecommunications traffic between a LEC and a CMRS provider, is not relevant to this proceeding.
[21] See 47 CFR § 51.701(b)(1).
[22] See 47 CFR § 51.701(a).

termination of local telecommunications traffic which is defined as traffic that originates and terminates within a local service area established by the state commission."[23] Typical traffic associated with a "virtual NXX" number does not originate and terminate within the same local calling area. Therefore, traffic associated with a "virtual NXX" number does not meet the definition of local telecommunications traffic and thus cannot be subject to reciprocal compensation.

Adelphia suggests to the Commission that the local nature of a call is determined based upon the NXX of the originating and terminating number, and Adelphia further asserts that this practice should be continued so that calls between an originating and terminating NXX, associated with the same local calling area, should be rated as local.[24] The problem with this position as proposed by Adelphia is that it does not give regard to where the call actually terminates. While the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a "virtual NXX" number is not in the same local service area as the originating point of the call. Thus, Adelphia's position is not consistent with FCC regulation 51.701(b)(1) which defines local telecommunications traffic as "<u>traffic … that originates and terminates</u> within a local service area established by the state commission." (emphasis added).

Other state commissions have also reached the conclusion that we reach on this issue. The Illinois Commerce Commission recently considered the same "virtual NXX" issue that is presented in this docket in an arbitration proceeding between Level 3

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[23] See 47 CFR § 51.701(a) and § 51.701(b)(1).

Communications and Ameritech Illinois. The Illinois Commission concluded that if a call would not be local but for the assignment of a "virtual NXX" number to the called party, no reciprocal compensation is owed.[25] The Illinois Commission explained that:

> The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, <u>as a matter of law, cannot be subject to reciprocal compensation</u>. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which [Ameritech Illinois] prefers, <u>this service works a fiction</u>. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. <u>There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation.</u> . . . On the basis of the record, the agreement should make clear that if [a Virtual] NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

Arbitration Decision at 9-10 (emphasis added).

The Maine Public Utilities Commission found that a "virtual NXX" service similar to that described by Adelphia constitutes "an interexchange service, not a local exchange service."[26] The Texas Public Utility Commission determined that when calls to "virtual NXX" numbers do not terminate within a mandatory local calling area, they are

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[24] Gates Direct at 15, l. 22 - 16, l. 4.

[25] Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (August 30, 2000), at 10.

[26] Order, *In re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber*, Docket No. 98-758 (Me. P.U.C. June 30, 2000), at p. 12.

not subject to reciprocal compensation.[27] The Florida Public Service Commission ruled that "[i]f [a CLEC] intends to assign numbers outside of the areas with which they are traditionally associated, [the CLEC] must provide information to other carriers that will enable them to properly rate calls to those numbers."[28] The Florida Commission also ordered that "the parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided."[29] The Georgia Public Service Commission ruled that a CLEC is allowed "to assign its NPA/NXX codes in accordance with the establishment of its local calling areas, provided that it furnish the necessary information to BellSouth and all other telecommunications carriers so that they may identify local and toll traffic and provide for the proper routing and billing of calls."[30]

As this Commission has determined that calls to "virtual NXX" numbers are not local calls for which reciprocal compensation must be paid, we must now consider whether BellSouth should be able to collect originating access on these calls. BellSouth asserts that if its position prevails on this issue that is must be allowed to collect originating access charges on calls to "virtual NXX" numbers that originate in one local calling area and terminate in a different local calling area. Adelphia asserts that the

[27] Arbitration Award, *In re: The Federal Telecommunications Act of 1996, Docket No. 21982* (July 14, 2000), at [WESTLAW *8].
[28] Final Order On Arbitration, *In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.*, Docket No. 99-1854-TP, Order No. PSC-00-1519-FOF-TP (August 22, 2000) at 43.
[29] *Id.*

imposition of originating access charges is inappropriate. Adelphia argues that since BellSouth and Adelphia provide the same network functions whether the call is to a physical presence or to a virtual presence that the compensation should be the same.[31] Additionally, Adelphia maintains that BellSouth's access charges are not cost-based.[32]

In support of its position, Adelphia cites to the FCC decision in *TRS Wireless v. US West, et al.*[33] Adelphia asserts that the *TRS Order* at paragraph 34 specifically notes that "[t]he Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation."[34]

In the *TRS Order,* the FCC was called upon to address five formal complaints filed by paging carriers against local exchange companies. The complaints alleged that the LECs improperly imposed charges for facilities used to deliver LEC-originated traffic and for Direct Inward Dialing ("DID") numbers in violation of the 1996 Act and the FCC's rules. In reaching its decision in the *TRS Order*, the FCC determined that its rules required LECs to deliver, without charge, traffic to CMRS providers anywhere within the local calling area, or Major Trading Area ("MTA") in the case of CMRSs, in which the call originated. In paragraph 31 of the *TRS Order*, the FCC stated that LECs are required "to deliver, without charge, traffic to CMRS providers anywhere within the MTA in

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[30] Order, *Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act of 1996*, Docket No. 11644-U (July 5, 2000) at 13.

[31] Gates Direct at 24, ll. 4 - 9.

[32] Gates Direct at 26, ll. 1-3.

[33] See *TRS Wireless v. US West, et al.*, Memorandum and Order, FCC 00-194 (rel June 21, 2000). (hereafter *TRS Order*).

[34] Gates Direct at 24, ll. 9 – 13, citing *TRS Wireless v. US West, et al.*, Memorandum and Order, FCC 00-194 (rel June 21, 2000).

which the call originated, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries."[35] It is important to note that the FCC did not say in the *TRS Order* that LECs were required to deliver calls to CMRS providers to points outside the MTA in which the call originated, but rather only had to deliver that traffic at no charge within the MTA where the call originated.

47 CFR § 51.701(b)(2) defines "local telecommunications traffic" between a LEC and a CMRS provider. While that section is not applicable to the issue before this Commission, the FCC's application of that section provides guidance to this Commission. Under 47 CFR § 51.701(b)(2), local telecommunications traffic is defined as local if at the beginning of the call, the telecommunications traffic originates and terminates within the same MTA. In the *TRS Order*, the FCC only required LECs to deliver at no charge that traffic which met the definition of local telecommunications traffic under 47 CFR § 51.701(b)(2), that is traffic that terminated within the MTA where the call originated.

The issue before this Commission concerns the definition of local telecommunications traffic contained in 47 CFR § 51.701(b)(1), which provides that "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission." Applying the rationale of the *TRS Order* to the issue presently before this Commission involving the definition contained in 47 CFR § 51.701(b)(1), this Commission concludes that BellSouth should be compensated for the "virtual NXX"

[35] *TRS Order*, pp. 23 –23, ¶ 31.

traffic. Under the rationale of the *TRS Order*, BellSouth is only required to deliver traffic at no charge within a local service area, and as the typical "virtual NXX" traffic terminates outside the local service area, BellSouth is not required to deliver that "virtual NXX" traffic at no charge.

We further find that imposition of originating access charges for this traffic does not, as alleged by Adelphia, create an economic barrier to any other providers providing service to ISPs and give BellSouth a significant competitive advantage.[36] As discussed above, BellSouth is not obligated to carry this traffic at no cost. BellSouth is entitled to compensation for carrying this traffic.

Further, the Commission concludes that originating access charges are the appropriate compensation rate. Without the "virtual NXX" designation, the traffic would be toll traffic. The proposal before this Commission in the context of this arbitration is whether originating access charges are due or no compensation at all. Based upon our conclusion that some compensation is due, we conclude that originating access charges are to be allowed for this traffic.

V. CONCLUSION

For the foregoing reasons, the Commission rejects the position of Adelphia on Issue No. 2 and adopts BellSouth's position on this issue. In adopting BellSouth's position, the Commission adopts the language proposed by BellSouth for inclusion in the interconnection agreement and orders the parties to incorporate the language proposed by BellSouth and set forth below into their interconnection agreement:

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[36] Gates Direct at 28, ll. 18-20.

> 6.1.6 The Parties agree that the jurisdiction of a call is determined by its originating and terminating (end to end) points. For the purpose of delivery of BellSouth originating traffic to Adelphia, BellSouth will pay to Adelphia reciprocal compensation for Local Traffic terminating to Adelphia end users physically located in the BellSouth rate center to which the Adelphia end user's NPA/NXX is assigned. If Adelphia assigns NPA/NXXs to specific BellSouth rate centers and assigns numbers from those NPA/NXXs to end users physically located outside of the rate center to which the NPA/NXX is assigned, BellSouth traffic originating from within the BellSouth rate center where the NPA/NXX is assigned and terminating to an Adelphia customer physically located outside of such rate center, and at a location toll to the BellSouth originating rate center, shall not be deemed Local Traffic, and no compensation from BellSouth to Adelphia shall be due therefore. Further, Adelphia agrees to identify such traffic to BellSouth and to compensate BellSouth for such traffic at BellSouth's tariffed switched access rates. In addition, Adelphia should not use NPA/NXXs to collect BellSouth originated local or intraLATA toll traffic for delivery to a point outside the LATA from where the originating NPA/NXX rate center resides.
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> 6.1.6.1 If Adelphia does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth will determine which whole Adelphia NPA/NXXs on which to charge the applicable rates for originating intrastate network access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if Adelphia can provide sufficient information for BellSouth to determine whether said traffic is local or toll.

IT IS THEREFORE ORDERED THAT:

1. The Commission adopts the language proposed by BellSouth for inclusion in the interconnection agreement as set forth above.

2. BellSouth shall not be required to pay reciprocal compensation for any call terminating to a customer who is physically located outside of the local calling area where the call originates.

3. BellSouth shall be allowed to impose originating access charges on all calls going to a "virtual NXX" code where the traffic is delivered to customers located outside the local calling area where the call originates.

4. This Order is enforceable against Adelphia and BellSouth. BellSouth affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, Adelphia affiliates are not bound by this Order. This Commission cannot force contractual terms upon a BellSouth or Adelphia affiliate which is not bound by the 1996 Act.

5. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)